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## Equitable Considerations in the Delimitation of the Continental Shelf

*Murat Sümer*

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## I. INTRODUCTION

The United Nations Convention on the Law of the Sea (UNCLOS)<sup>1</sup> recognizes various maritime zones, including the continental shelf, that grant different rights to coastal States. Part VI of UNCLOS governs the regime of the continental shelf. Judge David Attard of the International Tribunal for the Law of the Sea aptly points out that the sovereign rights of coastal States over this zone are exclusive regarding exploring and exploiting the natural resources on the continental shelf.<sup>2</sup>

The continental shelf is not only a physical reality but also a conceptual legal space. The delimitation of this zone is seen as one of the most contentious inter-State issues since delimitation offers significant resources to the coastal State.<sup>3</sup> President Truman signed the 1945 United States Proclamation on the Continental Shelf (Truman Proclamation) covering the subsoil and seabed in 1945. The Truman Proclamation is broadly recognized as a landmark development in the formation of the continental shelf doctrine and regime. Moreover, it represents a momentous State practice in claiming jurisdiction and control over the naturally appurtenant continental shelf. This proclamation set off similar declarations from other parts of the globe. Notably, the Truman Proclamation emphasized the fundamental role of equitable principles in the determination and delimitation of the continental shelf of the U.S. coast.<sup>4</sup> Several States welcomed the Truman Proclamation as it provided a basis for their respective claims for exploiting their continental shelf areas. Indeed, the consolidation of the law pertaining to the continental shelf after the Truman Proclamation prompted States to assert jurisdiction over shelf resources. For instance, the Bahamas and Jamaica in 1948, Saudi Arabia in 1948, nine Gulf sheikhdoms in 1949, and Australia in 1953 all made similar declarations.<sup>5</sup>

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1. United Nations Convention on the Law of the Sea, Dec. 10, 1982, 1833 UNTS 397.

2. David J. Attard, *Mediterranean Maritime Jurisdictional Claims: A Review*, in 23 THE HAMBURG LECTURES ON MARITIME AFFAIRS 2009 & 2010, at 89, 97 (Jürgen Basedow et al. eds., 2012).

3. See Dominic Roughton & Colin Trehearne, *The Continental Shelf*, in 1 THE IMLI MANUAL ON INTERNATIONAL MARITIME LAW 137 (David J. Attard et al. eds., 2014).

4. JAMES CRAWFORD, BROWNIE'S PRINCIPLES OF PUBLIC INTERNATIONAL LAW 272–73 (8th ed. 2019); Roughton & Trehearne, *supra* note 3, at 144–45.

5. David J. Attard, *Delimitation by a Single Maritime Boundary: A Preliminary View*, 13 IDDRIT 9 (1985); CRAWFORD, *supra* note 4, at 255.

There has been a significant transformation in the law of the sea since the end of the Second World War. States began to claim further jurisdiction over marine spaces. This trend caused the birth and eventual crystallization of new concepts and norms, resulting in fine-tuning allocation, jurisdiction, and control over resources. Eventually, UNCLOS codified the continental shelf doctrine. The concept of the continental shelf combines the criteria of natural prolongation with that of distance.<sup>6</sup>

Legal norms cannot adequately foresee and address every unique issue at the time of their formation.<sup>7</sup> For this reason, the design of UNCLOS is to function as a framework instrument that provides a flexible legal architecture for global ocean governance. The structure of UNCLOS demonstrates the intention of its drafters to interpret the convention through the evolving system of international law.<sup>8</sup> The drafters of UNCLOS did not design it as a tool to address all issues of ocean governance in detail but rather as an umbrella convention to ensure the progressive development of the law of the sea regime.<sup>9</sup>

States often find it challenging to extend their maritime jurisdiction areas to the maximum limits allowed by UNCLOS due to overlapping claims with their neighbors. Consequently, delimitation of maritime boundaries, where competing claims exist, has been a contentious and delicate matter, especially for the broader zones such as the continental shelf.<sup>10</sup>

Elements of equity for the determination of continental shelf boundaries have long been assiduously considered by international courts, tribunals, and States, even before the entry into force of UNCLOS. It seems that there has been a growing trend for reference to equity in the case law, especially since its codification in Article 83. Thus, international courts and tribunals are

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6. THOMAS COTTIER, *EQUITABLE PRINCIPLES OF MARITIME BOUNDARY DELIMITATION: THE QUEST FOR DISTRIBUTIVE JUSTICE IN INTERNATIONAL LAW* 45 (2015).

7. MASAHIRO MIYOSHI, *CONSIDERATIONS OF EQUITY IN THE SETTLEMENT OF TERRITORIAL AND BOUNDARY DISPUTES* 217–18 (1993).

8. Murat Sumer, *Overcoming the Legal Challenges of Maritime Autonomous Surface Ships (MASS) and Compliance with UNCLOS and SOLAS: Designation of a Remote Master to Assume the Safety Duties of a Master* 9–67 (Apr. 11, 2023) (Ph.D. thesis, Maastricht University).

9. S. Jayakumar, *The Regulation of Continental Shelf Development*, in *THE REGULATION OF CONTINENTAL SHELF DEVELOPMENT: RETHINKING INTERNATIONAL STANDARDS* 1 (Myron H. Nordquist et al. eds., 2013), <https://brill.com/abstract/title/23834?language=en>.

10. See Malcolm D. Evans, *Maritime Boundary Delimitation*, in *THE OXFORD HANDBOOK OF THE LAW OF THE SEA* 254 (Donald Rothwell et al. eds., 2015).

obliged, as per explicit reference of the aforesaid provision, to employ equitable considerations to maritime disputes in their dockets to produce equitable results.<sup>11</sup> In this context, it is well established that the consideration of relevant circumstances to achieve an equitable outcome is part and parcel of international law.<sup>12</sup> Indeed, jurisprudence also recognizes that the equitable principles doctrine stands as a fundamental norm of international law.<sup>13</sup>

Having said that, the precise role of equitable considerations and the proper weight to be given to relevant circumstances are yet to be elucidated. Indeed, it has caused legal debates in the doctrine due to potential “subjectivity” in the interpretation of legal norms. Notably, equity had a role even in the very early cases pertinent to the delimitation of the continental shelf.<sup>14</sup> However, the functions and application of equity to different cases have gradually evolved, reflecting the progressive character of the law of the sea regime, and reached a point of considerable consistency.<sup>15</sup>

As an adjective, the term “equitable” denotes “just, fair, and reasonable.”<sup>16</sup> The *Oxford Dictionary of Law* defines it as follows: “Just; conformable to the principles of natural justice and right. Just, fair, and right, in consideration of the facts and circumstances of the individual case.”<sup>17</sup> In the broadest sense, equity pertains to what is deemed reasonable and fair in the execution of justice.<sup>18</sup>

The nomenclature pertinent to the equitable solution may be confusing at times as the term equitable is used to describe both the desired solution and the means to be employed to attain it. Nonetheless, the emphasis is designed to be primarily on the outcome. The International Court of Justice

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11. Lucie Delabie, *The Role of Equity, Equitable Principles, and the Equitable Solution in Maritime Delimitation*, in MARITIME BOUNDARY DELIMITATION: THE CASE LAW 145, 145–48 (Alex G. Oude Elferink et al. eds., 2020).

12. MIYOSHI, *supra* note 7, at 217–18.

13. Barbara Kwiatkowska, *The International Court of Justice and Equitable Maritime Boundary Delimitation*, 28 ENVIRONMENTAL POLICY & LAW 261 (1998).

14. *See* North Sea Continental Shelf (F.R.G. v. Den.; F.R.G. v. Neth.), Judgment, 1969 I.C.J. 3 (Feb. 20).

15. Delabie, *supra* note 11, at 145–48.

16. *Equitable*, JONATHAN LAW, A DICTIONARY OF LAW (10th ed. 2022).

17. *Equitable*, BLACK'S LAW DICTIONARY (Bryan A. Garner ed., 7th ed. 1999).

18. Maciej Gorka, *Equitable Principles in the Delimitation of the Aegean Continental Shelf*, 11 POLISH REVIEW OF INTERNATIONAL & EUROPEAN LAW 199, 200–05 (2022).

(ICJ) eloquently noted in the *Tunisia/Libya* case that: “It is, however, the result which is predominant; the principles are subordinate to the goal.”<sup>19</sup>

Thomas Cottier observes that equity and law have been companions since the emergence of a rule-based legal order. There is also increasing awareness in the international community regarding the importance of equity in international law in general and the delimitation of maritime boundaries in particular.<sup>20</sup> The ICJ and other international tribunals have comprehensively elaborated the delimitation standards by drawing upon equitable principles regarding continental shelf disputes.<sup>21</sup> In the *Tunisia/Libya* case, the ICJ defined the rather complicated term “equity” by linking it to the broader concept of justice.

Equity as a legal concept is a direct emanation of the idea of justice. The Court whose task is by definition to administer justice is bound to apply it. In the course of the history of legal systems the term “equity” has been used to define various legal concepts. It was often contrasted with the rigid rules of positive law, the severity of which had to be mitigated in order to do justice. In general, this contrast has no parallel in the development of international law; the legal concept of equity is a general principle directly applicable as law. Moreover, when applying positive international law, a court may choose among several possible interpretations of the law the one which appears, in the light of the circumstances of the case, to be closest to the requirements of justice.<sup>22</sup>

Apparently, the core principle of the delimitation of the continental shelf is based on equity. However, there is no closed list of equitable considerations that restricts international courts and tribunals. Presumably, that is why disputing States have been creative by arguing that various factors are circumstances that need to be considered for the achievement of equitable outcomes. Nevertheless, judicial mechanisms are naturally expected only to consider those relevant to a given case. Unlike States, which have wider discretion, international courts and tribunals do not enjoy such flexibility given

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19. Yurika Ishii, *Relevant Coasts and Relevant Area in the Maritime Delimitation of the EEZ and Continental Shelf*, 51 OCEAN DEVELOPMENT & INTERNATIONAL LAW 307 (2020); Continental Shelf (Tunis./Libya), Judgment, 1982 I.C.J. 18, ¶ 70 (Feb. 24).

20. COTTIER, *supra* note 6, at 8–10.

21. Gorka, *supra* note 18, at 209.

22. Continental Shelf (Tunis./Libya), *supra* note 19, ¶ 71.

that they are bound by those factors related to the delimitation of the continental shelf regime.<sup>23</sup>

## II. CONVENTION ON THE CONTINENTAL SHELF

Although the Convention on the Continental Shelf (CCS)<sup>24</sup> has been supplanted by UNCLOS as the primary reference instrument on the continental shelf, it may nonetheless be prudent to have a glance at it before delving into the modern law as there is a remarkable difference between the two. Unlike UNCLOS, CCS indicates a method for the delimitation of the continental shelf, which is the median-equidistance/special circumstances method.<sup>25</sup>

Where the same continental shelf is adjacent to the territories of two or more States whose coasts are opposite each other, the boundary of the continental shelf appertaining to such States shall be determined by agreement between them. In the absence of agreement, and unless another boundary line is justified by special circumstances, the boundary is the median line, every point of which is equidistant from the nearest points of the baselines from which the breadth of the territorial sea of each State is measured.<sup>26</sup>

The ICJ and other tribunals were called upon to render decisions concerning the continental shelf based on international law. The ICJ's 1969 judgment on the *North Sea Continental Shelf* case<sup>27</sup> was the beginning of much-needed case law on the delimitation of the continental shelf.<sup>28</sup> Such decisions contributed to the development of customary rules. The *North Sea Continental Shelf* case was a leading example and underscored the essential role of equity.<sup>29</sup> It is submitted that the CCS was not a codification of customary international law on the continental shelf regime; rather, it was a legal instru-

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23. COTTIER, *supra* note 6, 440–51.

24. Convention on the Continental Shelf, Apr. 29, 1958, 15 U.S.T. 471, T.I.A.S. No. 5578, 499 U.N.T.S. 311.

25. Davor Vidas, *The Delimitation of the Territorial Sea, the Continental Shelf, and the EEZ: A Comparative Perspective*, in MARITIME BOUNDARY DELIMITATION, *supra* note 11, at 33, 44–45.

26. Convention on the Continental Shelf, *supra* note 24, art. 6(1).

27. *North Sea Continental Shelf*, *supra* note 14.

28. Alex G. Oude Elferink et al., *The Judiciary and the Law of Maritime Delimitation: Setting the Stage*, in MARITIME BOUNDARY DELIMITATION, *supra* note 11, at 1, 9–10.

29. Roughton & Trehearne, *supra* note 3, at 148.

ment progressively developing the doctrine on the continental shelf. Notably, although the CCS contained the equidistance principle, this was not considered a reflection of customary law by the ICJ in the *North Sea Continental Shelf* case. Perhaps this judgment, early after the CCS entered into force, was an unlucky development for the sake of this method as the ICJ, when confronted with the equidistance principle, strongly resisted subscribing to it, which arguably prevented the principle from crystallizing into customary international law at an early stage.

The ICJ rightly concluded that the method foreseen in Article 6 was merely a treaty rule, thus binding only among the States that were party to the CCS. Hence, it may only be relevant where both disputing States are parties to CCS and not to UNCLOS. In contrast to this, remarkably, Article 83 of UNCLOS is widely recognized as a reflection of customary international law.<sup>30</sup> In this context, the UNCLOS formula was based on the relevant case law resisting the principle of equidistance as foreseen by the CCS. Thus, the said principle was intentionally omitted, and a more flexible approach was embraced by UNCLOS.<sup>31</sup>

### III. UNCLOS

Whereas Article 76 of UNCLOS defines the continental shelf, the delimitation of the continental shelf between States is regulated by Article 83(1) as follows: “The delimitation of the continental shelf between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, in order to achieve an equitable solution.”

Distinct from Article 6 of the 1958 Convention on the Continental Shelf, Article 83 of UNCLOS has faced criticism for its lack of effectiveness in resolving competing continental shelf claims. As a result, it was anticipated, even among States that are party to UNCLOS, that disputes on the delimitation of the continental shelf would largely be resolved through the principles of customary international law.<sup>32</sup>

Upon the introduction of UNCLOS and the increased breadth of maritime zones, States have become geographically closer to each other, leading to a rise in overlapping maritime claims. The approach of the UNCLOS regime is based on the main principle of the ICJ’s landmark case on the *North*

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30. Maritime Dispute (Peru v. Chile), Judgment, 2014 I.C.J. 3, ¶ 179 (Jan. 27).

31. Gorka, *supra* note 18, at 217–19; CRAWFORD, *supra* note 4, at 255.

32. Attard, *supra* note 2, at 97.



*Sea Continental Shelf*. In this regard, UNCLOS allows coastal States to claim a continental shelf up to two hundred nautical miles. It is noteworthy that UNCLOS prioritizes the distance element rather than the geological or geomorphological characteristics of the seabed and subsoil. Article 83 focuses on the objective of the delimitation process rather than offering a clear methodology to achieve such an objective. Arguably, the wording of Article 83 is intended to be vague given the fact that the delimitation of the continental shelf was a highly controversial issue at the Third United Nations Conference on the Law of the Sea. The solution was to come up with a compromise formula that set out the objective. In this context, Article 83 sufficed to refer only to the solution as being equitable. Hence, UNCLOS does not provide any specific criteria for the application of equitable principles or the method of the delimitation of the continental shelf to achieve the ultimate objective—an equitable solution.<sup>33</sup>

During the Third United Nations Conference on the Law of the Sea, there were irreconcilable disagreements regarding the criteria for the delimitation of the continental shelf between States. States were mainly divided into two groups advocating either the strict application of equitable principles or the employment of the CCS's equidistant/median line.<sup>34</sup> Against this backdrop, Article 83 emerged as a compromise solution that was acceptable to both groups. As it was a diplomatic compromise between the two distinct groups of States, UNCLOS deliberately refrained from attempting to stipulate the preferred methodology in the delimitation of the continental shelf between States. In light of this, Stephen Fietta and Robin Cleverly aptly observe that subsequent State practice and case law would provide the required guidance and clarification on the methodology to reach an equitable solution.<sup>35</sup> Indeed, courts and tribunals have contributed significantly towards a methodology, and they have developed a jurisprudence reducing the factors of subjective interpretations and legal uncertainties. Despite this, as each case

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33. VICTOR PRESCOTT & CLIVE SCHOFIELD, *THE MARITIME POLITICAL BOUNDARIES OF THE WORLD* 9 (2005); Christian Schaller, *Hardly Predictable and Yet an Equitable Solution: Delimitation by Judicial Process as an Option for Greece and Turkey in the Eastern Mediterranean*, 35 *LEIDEN JOURNAL OF INTERNATIONAL LAW* 549, 558–67 (2022); Roughton & Trehearne, *supra* note 3, at 156; Shunji Yanai, *International Law Concerning Maritime Boundary Delimitation*, in 1 *IMLI MANUAL*, *supra* 3, at 304, 314–16.

34. Yanai, *supra* note 33, at 310.

35. STEPHEN FIETTA & ROBIN CLEVERLY, *A PRACTITIONER'S GUIDE TO MARITIME BOUNDARY DELIMITATION* 25–27, 52–55 (2016); Donald McRae, *The Applicable Law: The Geneva Convention on the Continental Shelf, the LOSC, and Customary International Law*, in *MARITIME BOUNDARY DELIMITATION*, *supra* note 11, at 92, 108.

arises under unique circumstances, no mandatory method can be applied to all continental shelf cases.<sup>36</sup>

Article 83 is silent on any delimitation method; nevertheless, it states the ultimate objective.<sup>37</sup> It simply requires that delimitation be effected by an agreement based on international law, as referred to in Article 38 of the ICJ's Statute, to achieve an equitable solution. Thus, pursuant to UNCLOS, there is wide room to maneuver to ensure an equitable outcome.<sup>38</sup> The rather "simple and imprecise formula" of Article 83 permits a broader consideration of the general principles of international law and the body of law developed by the international judicial mechanisms germane to the delimitation of the continental shelf.<sup>39</sup>

However, the general nature of Article 83 provided limited guidance to disputing parties when they differ on the application and interpretation of the law and the suitable methods to delimit their continental shelves. Thus, it has necessitated an active role for international courts and tribunals in forming the methods for the delimitation of the continental shelf. Although States can settle disputes by mutual agreement, the intricacies and sensitivities of the issues prevent successful resolutions. Subsequently, maritime boundary delimitation has been the most frequent issue of cases presented before the ICJ and other conciliation bodies. Consequently, the law of maritime delimitation has been regarded as a "judge-made" law. Perhaps it was not a choice for the courts and tribunals but a task conferred upon them to exercise a creative legal function. In this regard, the case law of the ICJ, arbitral tribunals, and recently, the International Tribunal for the Law of the Sea (ITLOS) contributed significantly to the law on maritime boundary delimitation.<sup>40</sup> Notably, publicists also acknowledge the law of maritime boundary delimitation as a classic illustration of the use of its "de facto legislative power" by the ICJ. Particularly, the ICJ made a major contribution

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36. Yanai, *supra* note 33, at 314–16.

37. Vidas, *supra* note 25, at 40–41.

38. Fayokemi Olorundami, *Objectivity Versus Subjectivity in the Context of the ICJ's Three-Stage Methodology of Maritime Boundary Delimitation*, 32 INTERNATIONAL JOURNAL OF MARINE & COASTAL LAW 36, 40–42 (2017).

39. Arbitration Between Barbados and the Republic of Trinidad and Tobago, Relating to the Delimitation of the Exclusive Economic Zone and the Continental Shelf, 27 R.I.A.A. 147 (Perm. Ct. Arb. 2006).

40. Evans, *supra* note 10, at 255; MASSIMO LANDO, MARITIME DELIMITATION AS A JUDICIAL PROCESS 290–91 (2019); Elferink et al., *supra* note 28, at 1–4.

to the development of law on equitable considerations in the delimitation of the continental shelf.<sup>41</sup>

#### IV. THE ROLE OF EQUITABLE PRINCIPLES IN THE DELIMITATION OF THE CONTINENTAL SHELF

Article 83 of UNCLOS emphasizes the final outcome of the delimitation process without imposing any particular criterion. In this respect, fundamentally, the principles used for the delimitation are those which are suitable to produce an equitable result.<sup>42</sup> The *Libya/Malta* case has been widely cited in the doctrine as it denoted certain aspects of equitable principles, specifically that “[t]he result of the application of equitable principles must be equitable.”<sup>43</sup> Moreover, it also stressed that it is bound to handle cases based on equitable principles. Furthermore, upon observing that UNCLOS solely envisages a standard to be attained without prescribing the exact method, the ICJ clearly elucidates that it is the task of the States and the courts to give this standard a specific meaning.<sup>44</sup> Furthermore, while enlisting several equitable principles, the Court also acknowledged the normative character of such principles:

The normative character of equitable principles applied as a part of general international law is important because these principles govern not only delimitation by adjudication or arbitration, but also, and indeed primarily, the duty of Parties to seek first a delimitation by agreement, which is also to seek an equitable result. That equitable principles are expressed in terms of general application, is immediately apparent from a glance at some well-known examples: the principle that there is to be no question of refashioning geography, or compensating for the inequalities of nature; the related principle of non-encroachment by one party on the natural prolongation of the other, which is no more than the negative expression of the positive rule that the coastal State enjoys sovereign rights over the continental shelf off its coasts to the full extent authorized by international law in the relevant circumstances; the principle of respect due to all such relevant circumstances; the principle that although all States are equal before the law and are entitled to equal treatment, “equity does not necessarily

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41. Victor Stoica, *The Development of Maritime Delimitation by the International Court of Justice*, 20 ROMANIAN JOURNAL OF INTERNATIONAL LAW 114, 128 (2018).

42. Continental Shelf (Tunis./Libya), *supra* note 19, ¶ 50.

43. Continental Shelf (Libya/Malta), Judgment, 1985 I.C.J. 13, ¶ 28 (June 3).

44. *Id.*

imply equality” (*I.C.J. Reports 1969*, p. 49, para. 91), nor does it seek to make equal what nature has made unequal; and the principle that there can be no question of distributive justice.<sup>45</sup>

Notably, the ICJ held in the *Tunisia/Libya* case that the equitableness of any given principle is fundamentally gauged by its effectiveness in producing an equitable result. Therefore, the equitableness of a principle might be determined based on its appropriateness and possible contribution to the desired outcome. In light of the preceding, it may be safe to deduct that the equitable principles should not be understood in isolation, given that the means and outcome should intersect in the realm of equitableness.<sup>46</sup>

#### A. *Land Dominates the Sea*

In the *St. Pierre and Miquelon* case, the arbitral tribunal emphasized that “[g]eographical features are at the heart of the delimitation process.”<sup>47</sup> Cottier also rightly points out the dominant role of geographic considerations among equitable principles and the relevant circumstances. The crucial role of coastal geography is best illustrated by reference to some of the early cases of the delimitation of the continental shelves. The relevant body of law suggests that coastal sovereignty is the legal basis of title to the continental shelf. In a corollary to this, the international courts and tribunals have consistently highlighted the significant role of the land and its coastal configuration in terms of equity. In this context, the maxim “land dominates the sea” has been well established and often cited by third-party dispute settlement mechanisms. From the *North Sea Continental Shelf* case onwards, the general coastal configuration has been considered to be the dominant consideration in any delimitation exercise as a reflection of the principle that the land dominates the sea (islands are essentially geographical features that are within the seas, thus, unless they are part of an island State they might naturally be dominated by the mainland). This principle is broad and, in fact, means that there is to

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45. *Id.* ¶ 46.

46. *Continental Shelf (Tunis./Libya)*, *supra* note 19, ¶ 70.

47. *Case Concerning Delimitation of Maritime Areas (St. Pierre and Miquelon) (Can./Fr.)*, 31 INTERNATIONAL LEGAL MATERIALS 1145, 1160, ¶ 24 (1992), *quoted in* *Arbitral Tribunal Constituted Pursuant to Article 287, and in Accordance with Annex VII, of the United Nations Convention on the Law of the Sea (Guy. v. Surin.)*, Case No. 2004-04, *Suriname Counter Memorial*, vol. 1, ch. 4, ¶ 4.19 (Perm. Ct. Arb. 2007).

be no question of refashioning geography as well.<sup>48</sup> Similarly, relevant circumstances are also inherently linked to coastal geography and, thus, seen as the most significant.<sup>49</sup>

### B. *Non-Encroachment*

Another equitable principle that is fundamentally connected to geography is the principle of non-encroachment (non-cutoff). This principle was introduced by the 1969 *North Sea Continental Shelf* case in terms of the principle of natural prolongation. Since that case, international courts and tribunals have upheld the principle of non-cutoff effect, according to which, when a boundary line encroaches upon the maritime entitlements of a neighboring State, it warrants the adjustment/shift of that boundary line to attenuate the cutoff effect.<sup>50</sup> This principle has been rightly depicted as one of the pillars of the law on the delimitation of maritime boundaries.<sup>51</sup>

In this regard, remarkably, the ICJ and international tribunals have consistently maintained that cutoff effects caused by an island can be a relevant circumstance that is inherently interrelated with the principle of non-cutoff effect. To prevent excessive cutoff effects, the ICJ and international tribunals employ various techniques, such as ignoring, giving narrow corridors, or enclaving, especially if those islands are in the vicinity of the other State.<sup>52</sup> Moreover, to achieve an equitable result, international courts and arbitrators can refuse to fix base points on an island to draw the provisional delimitation line.<sup>53</sup> In the recent case of *Somalia/Kenya*, the ICJ referred to this principle in detail as follows:

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48. COTTIER, *supra* note 6, 525–30; Malcolm Evans, *Relevant Circumstances*, in MARITIME BOUNDARY DELIMITATION, *supra* note 11, at 222, 249–52; Çağatay Erciyes & Murat Sümer, *Maritime Boundary Delimitation Process*, 2 DEHUKAM JOURNAL OF THE SEA AND MARITIME LAW 415 (2019).

49. Arbitral Tribunal Constituted Pursuant to Article 287, and in Accordance with Annex VII, of the United Nations Convention on the Law of the Sea (Guy. v. Surin.), Case No. 2004-04, Suriname Counter-Memorial, vol. 1, ch. 4, ¶¶ 4.19–4.22 (Perm. Ct. Arb. 2007); Evans, *Relevant Circumstances*, *supra* note 48, at 249–61.

50. LANDO, *supra* note 40, at 168; COTTIER, *supra* note 6, at 525–30.

51. FIETTA & CLEVERLY, *supra* note 35, at 68, 70.

52. Schaller, *supra* note 33, at 563–67; DONALD ROTHWELL & TIM STEPHENS, THE INTERNATIONAL LAW OF THE SEA 437–39 (2016).

53. Paul von Muhlendahl, *Tiny Land Features in Recent Maritime Delimitation Case Law*, 31 INTERNATIONAL JOURNAL OF MARINE & COASTAL LAW 1, 17–22 (2016).

The Court recalls its jurisprudence and that of international tribunals according to which an adjustment of the provisional equidistance line is warranted if the cut-off effect is “serious” or “significant.”<sup>54</sup>

In the view of the Court, even though the cut-off effect in the present case is less pronounced than in some other cases, it is nonetheless still serious enough to warrant some adjustment to address the substantial narrowing of Kenya’s potential entitlements.<sup>55</sup>

The Court has affirmed that “the achievement of an equitable solution requires that, so far as possible, the line of delimitation should allow the coasts of the Parties to produce their effects in terms of maritime entitlements in a reasonable and mutually balanced way.” This is an important standard to be used in making an adjustment to the provisional equidistance line.<sup>56</sup>

In view of the above considerations, the Court believes that it is necessary to shift the [provisional equidistance] line to the north so that, from Point A, it follows a geodetic line with an initial azimuth of 114°. This line would attenuate in a reasonable and mutually balanced way the cut-off effect produced by the unadjusted equidistance line due to the geographical configuration of the coasts of Somalia, Kenya and Tanzania.<sup>57</sup>

The cut-off effect typically arises during the application of the equidistance method.<sup>58</sup> In the *Costa Rica/Nicaragua* case, the ICJ noted that the cut-off effect seen in the dispute being litigated amounted to a marked cutoff effect of Nicaragua’s seaward projections and, therefore, inequitable. Based on this legal reasoning, the Court did not hesitate to adjust the provisional equidistance line for the continental shelf by giving half effect to the Santa Elena Peninsula.<sup>59</sup>

There seems to be no real distinction between equitable principles and relevant circumstances in the doctrine. International courts and tribunals, as

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54. *Maritime Delimitation in the Indian Ocean (Som. v. Kenya)*, Judgment, 2021 I.C.J. 206, ¶ 170 (Oct. 12) (citations omitted).

55. *Id.* ¶ 171.

56. *Id.* ¶ 172 (citations omitted).

57. *Id.* ¶ 174.

58. *Continental Shelf (Tunis./Libya)*, *supra* note 19, ¶ 76.

59. *Maritime Delimitation in the Caribbean Sea and the Pacific Ocean (Costa Rica v. Nicar.)* and *Land Boundary in the Northern Part of Isla Portillos (Costa Rica v. Nicar.)*, Judgment, 2018 I.C.J. 139, ¶ 11 (Feb. 2).

well as publicists, have used both terms interchangeably. Nonetheless, although they are firmly interrelated, it does not necessarily mean that they are the same. Perhaps it may be safe to say that they serve the same objective, which is the attainment of equitable outcomes. Cottier skillfully distinguishes the two concepts by elucidating their differences. Whereas relevant circumstances are essentially factual as they reflect the specific facts of an individual case, equitable principles are inherently abstract, and they have normative character to offer guidance in delimitation cases. Arguably, they might effectively assess the relevance and gauge their overall weight on delimitation. Therefore, although equitable principles might have broader applicability in delimitation cases, the employment of relevant circumstances would be only relevant in the event that factual circumstances, such as the location, population, size of islands, etc., are present in a particular case.<sup>60</sup>

## V. RELEVANT CIRCUMSTANCES

According to the ICJ, it is a truism that what is deemed equitable and reasonable in any specific case hinges on the unique circumstances of that case. Thus, accomplishing the ultimate objective of the delimitation process necessitates considering the relevant circumstances. Therefore, equitable principles impose the acknowledgment of the particular relevant circumstances.<sup>61</sup> The ICJ deems itself bound to apply equitable principles as part of international law to the delimitation cases brought before it. In this vein, the ICJ balances different particular considerations that it sees as relevant to achieve an equitable result. Notably, there are no rigid rules in international law that restrict the flexibility of a court in determining the exact weight of each factor.<sup>62</sup>

The ICJ acknowledged the essential role of relevant circumstances for the first time in the *North Sea Continental Shelf* case. The ICJ noted that the delimitation of the continental shelf is to be affected by an agreement in line with equitable principles and considering all the relevant circumstances, which was later reflected in Article 83 of UNCLOS as well.<sup>63</sup> International courts and tribunals developed different methods over time for ensuring an equitable outcome for the disputes brought to them. While there is no mandatory one-size-fits-all method for the delimitation of continental shelf cases,

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60. COTTIER, *supra* note 6, at 522–24.

61. Continental Shelf (Tunis./Libya), *supra* note 19, ¶ 72.

62. *Id.* ¶ 71.

63. LANDO, *supra* note 40, at 167.

the ICJ recently transformed the so-called equidistance/relevant circumstances approach into a more equitable three-stage method.<sup>64</sup> Having said that, other methods are still in use where the application of the method is not appropriate for realizing equitable goals.<sup>65</sup>

#### A. Geographical Factors

By far, the most important category of relevant circumstances is coastal geography. Indeed, modern jurisprudence and State practice appear to prioritize the geographical criteria for the delimitation of the continental shelf due to its objective character.<sup>66</sup> In the *Tunisia/Libya Continental Shelf* case, it was noted that all the relevant circumstances are to be considered in a balanced manner. Moreover, that judgment underscored the importance of the use of equitable principles at every stage of the delimitation process, including the use of the equidistance line:

The application of equidistance and of equitable principles are not to be viewed as two distinct and successive phases, nor as requiring that equitable principles are only to be resorted to after applying equidistance, in order to correct its result. There is no such succession in time and the process must be a simultaneous one.<sup>67</sup>

The employment of equitable principles entails considering the relevant circumstances. Although there is no closed list, these circumstances encompass factors such as the differences in the coastal lengths, positions, and distances of islands as opposed to the mainlands, the general configuration of the coasts, and the broader general geographical context.<sup>68</sup>

On the other hand, several factors occasionally mentioned, though there are not clear indications that they are broadly embraced, comprise the geological structure and geomorphology of the seabed: the presence of resources in the contested area; the conduct of the disputing parties; development status; and previous maritime delimitations in the region.<sup>69</sup> Even if

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64. *See* Maritime Delimitation in the Black Sea (Rom. v. Ukr.), Judgment, 2009 I.C.J. 61 (Feb. 3).

65. Yanai, *supra* note 33, at 339–40.

66. Evans, *Relevant Circumstances*, *supra* note 48, at 249–61.

67. MIYOSHI, *supra* note 7, at 136–37.

68. CRAWFORD, *supra* note 4, at 273–75.

69. *Id.* at 275–78.



some of these factors might have varying impacts on overall equitable outcomes, they will be more relevant, provided that they are related to coastal geography.<sup>70</sup>

Equity does not inherently mean equal treatment. Attard observes that it might be challenging to treat the circumstances of a State with a vast coastline equally to one with a limited coastline.<sup>71</sup> In this context, international courts and tribunals also seem to emphasize that notable differences in competing coastal lengths would necessitate adjustment or shifting of the provisional delimitation line.<sup>72</sup>

For instance, in maritime delimitation cases such as *Libya/Malta* and *Nicaragua/Colombia*, a marked disparity in the coastal lengths of the parties was deemed to constitute relevant circumstances necessitating the adjustment of the maritime boundary in favor of the State possessing the longer relevant coast. Thus, islands are rightly considered as relevant circumstances where they have a distortive effect in the area subject to delimitation. However, one should not overlook the fact that the presence of islands per se might not constitute a relevant circumstance that would justify the impact on delimitation unless there is an atypical situation that deviates from the general geographical situation. Doctrine suggests that the impact of distortion can be measured by drawing two different equidistance/median lines with and without the island. In the event of a distorting effect, depending on the distance from the mainland of both parties, their size, and so on, the islands can be ignored or given limited effect.<sup>73</sup>

International jurisprudence developed another creative solution to prevent such distortion through the enclavement of islands located on the other side of the equidistance/median line close to the opposite or adjacent State. Indeed, by enclaving an island, the island's distorting effect might be prevented. A typical example of a full enclavement of a substantially inhabited island cluster can be seen in the handling of the Channel Islands. The British islands group covers nearly two hundred kilometers with a dense population of more than one hundred thousand. Yet, they are on the wrong side of the median line (just over six nautical miles from the French mainland but almost fifty nautical miles from the UK mainland).

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70. Evans, *Relevant Circumstances*, *supra* note 48, at 249–61.

71. David Attard, *The Mediterranean as an Enclosed Sea in the New Law of the Sea*, 24 (1977) (LL.D. thesis, University of Malta).

72. FIETTA & CLEVERLY, *supra* note 35, at 67.

73. *Id.* at 72–73.

The tribunal held that if they were to give full effect to the British islands closer to the French coast in delimiting the continental shelf, it would lead to a significant reduction in the continental shelf area that would have otherwise been allocated to France. In this case, to ensure equitable balance, the tribunal found the continental shelves of the disputing parties needed to be delimited between their mainlands rather than between the British islands group and the mainland of France. As a result, the ruling created a twelve nautical miles enclave around the British islands within the continental shelf of France.<sup>74</sup> Similarly, ITLOS, in the *Bangladesh v. Myanmar* case, considering the geographical circumstances (because of its location), decided to give no effect to Bangladesh's St. Martin's Island because it would have caused a cut-off effect and an unwarranted distortion.<sup>75</sup> The primary rationale behind this legal approach has been the pursuit of an equitable solution. In this way, international courts and tribunals have aimed to avoid the significant disparity.<sup>76</sup>

Massimo Lando observes that international courts and tribunals have devised a consistent approach for determining the effect of islands on delimitation; in this regard, enclaving an island within the maritime spaces of another State may be appropriate for islands on the wrong side of the median line.<sup>77</sup> Arguably, such islands on the wrong side of the delimitation line belong to a disadvantaged sub-category of islands as they compete against continental mainlands, justifying their limited impact in the overall delimitation process.

### B. *Non-Geographical Factors*

The impact of non-geographical factors has been subject to debate. Non-geographical factors, among others, are security interests,<sup>78</sup> economic factors,<sup>79</sup> historic rights,<sup>80</sup> conduct of the disputing parties,<sup>81</sup> and environmental factors. For instance, although economic considerations lie at the core of the

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74. Schaller, *supra* note 33, at 563–67; FIETTA & CLEVERLY, *supra* note 35, at 81–82.

75. LANDO, *supra* note 40, at 182–85.

76. Gorka, *supra* note 18, at 220–21.

77. LANDO, *supra* note 40, at 178–81.

78. *See* Continental Shelf (Libya/Malta), Application to Intervene, Judgment, 1984 I.C.J. 3 (Mar. 21).

79. *See* Land and Maritime Boundary Between Cameroon and Nigeria (Cameroon v. Nigeria: Equatorial Guinea intervening), Order of 20 February 2001, 2001 I.C.J. 9 (Feb. 20).

80. *See* Continental Shelf (Tunis./Libya), *supra* note 19.

81. *Id.*

continental shelf, such factors have not played an important role.<sup>82</sup> In accordance with the case law, such non-geographical factors can only be considered after the geographical ones and in relation to them.<sup>83</sup>

Malcolm Evans reminds us that one of the original rationales of the continental shelf declared in the Truman Proclamation was the self-protection of the coastal State to monitor the activities off its shore, which are of the nature necessary for the utilization of the resources therein. Accordingly, the potential relevance of security, defense, and law enforcement concerns appears to be accepted.<sup>84</sup> For instance, in the *Libya/Malta* case, the ICJ considered the security issues.<sup>85</sup> In the *Nicaragua/Colombia* case, both States invoked security and law enforcement considerations about the appropriate course of the maritime boundary.

The Court considers that much of Colombia's arguments on this issue are, in effect, arguments regarding conduct which have been dealt with in the preceding section of the Judgment. It also notes that control over the exclusive economic zone and the continental shelf is not normally associated with security considerations and does not affect rights of navigation. However, the Court has recognized that legitimate security concerns might be a relevant consideration if a maritime delimitation was effected particularly near to the coast of a State and the Court will bear this consideration in mind in determining what adjustment to make to the provisional median line or in what way that line should be shifted.<sup>86</sup>

In the recent *Somalia/Kenya* case, security interests were also considered by the ICJ, and the Court implied that security considerations, depending on the situation, might justify the adjustment of the provisional equidistance line.

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82. Nicholas Ioannides & Constantinos Yiallourides, *A Commentary on the Dispute Concerning the Maritime Delimitation in the Indian Ocean (Somalia v Kenya)*, EJIL:TALK! (Oct. 22, 2021), <https://www.ejiltalk.org/a-commentary-on-the-dispute-concerning-the-maritime-delimitation-in-the-indian-ocean-somalia-v-kenya/>; YOSHIFUMI TANAKA, *THE INTERNATIONAL LAW OF THE SEA* 272–90 (4th ed. 2023).

83. *Delimitation of the Maritime Boundary in the Gulf of Maine Area (Can./U.S.)*, Judgment, 1984 I.C.J. 246 (Oct. 12).

84. Evans, *Relevant Circumstances*, *supra* note 48, at 249–61.

85. *See* *Continental Shelf (Libya/Malta)*, *supra* note 43.

86. *Territorial and Maritime Dispute (Nicar. v. Colom.)*, Judgment, 2012 I.C.J. 624, ¶¶ 221–22 (Nov. 19).

As far as the security interests of Kenya are concerned, the Court is fully aware of and does not underestimate the serious threats to security in the region. These threats are certainly of legitimate concern to the States in the region and to the international community at large. The Court notes the efforts of the international community, in particular the United Nations and the African Union, as well as of various countries, including Kenya, to assist Somalia in re-establishing peace and security after many years of internal conflicts. The Court observes that boundaries between States, including maritime boundaries, are aimed at providing permanency and stability. This being so, the Court believes that the current security situation in Somalia and in the maritime spaces adjacent to its coast is not of a permanent nature. The Court is, therefore, of the view that the current security situation does not justify the adjustment of the provisional equidistance line. Moreover, the Court recalls its statement in a previous case that legitimate security considerations may be a relevant circumstance “if a maritime delimitation was effected particularly near to the coast of a State” (*Territorial and Maritime Dispute Nicaragua v. Colombia* . . .). This is not the case here, as the provisional equidistance line does not pass near the coast of Kenya.<sup>87</sup>

Moreover, in this case, the Court highlighted the fact that relevant circumstances are not *numerus clausus*. Notably, it drew attention to the fact that the term “relevant circumstances” is not employed and not identified in UNCLOS. Indeed, these circumstances have been specified in the judicial practice on a case-by-case basis.<sup>88</sup> In this regard, the relevant circumstances are case-specific. Different methods permit such circumstances to be taken into account for achieving an equitable result.<sup>89</sup> Relevant circumstances asserted by the disputing States are quite diverse.<sup>90</sup> However, the ICJ, in its *Continental Shelf Judgment (Libyan/Malta)*, noted that even though there is no exhaustive list, only those relevant circumstances that are pertinent to the dispute can be considered by the courts.

Yet although there may be no legal limit to the considerations which States may take account of, this can hardly be true for a court applying equitable procedures. For a court, although there is assuredly no closed list of considerations, it is evident that only those that are pertinent to the institution of the continental shelf as it has developed within the law, and to the application of equitable principles to its delimitation, will qualify for

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87. Maritime Delimitation in the Indian Ocean (Som. v. Kenya), *supra* note 54, ¶ 158.

88. *Id.* ¶ 124.

89. Schaller, *supra* note 33, at 563–67.

90. TANAKA, *supra* note 82, at 272.

inclusion. Otherwise, the legal concept of continental shelf could itself be fundamentally changed by the introduction of considerations strange to its nature.<sup>91</sup>

Tanaka observes the tendency of the international courts and tribunals to prioritize geographical factors over non-geographical ones. Non-geographical elements appear to have a relatively modest impact on the delimitation process.<sup>92</sup>

#### VI. EQUITABLE CONSIDERATIONS AND THE THREE-STAGE APPROACH

It is recognized that the employment of the equidistance line method may only be possible for disputed areas without complicated or unique geographic circumstances. Consequently, in unique geographic contexts, reliance on a strict equidistance/median line drawn between the islands of another mainland State and the mainland of the other State might not be equitable or practical.<sup>93</sup> Since each delimitation case is unique, it is crucial to have flexible consideration of various factors to attain an equitable outcome. Fundamentally, maritime delimitation law has evolved through the decisions of international courts and tribunals.<sup>94</sup>

In this regard, in the *Black Sea* case, the ICJ formulated a three-stage approach for delimitation of the continental shelf. The initial stage is to set a provisional delimitation line. This provisional line merely serves as a practical starting point subject to constant review and modification in each step.<sup>95</sup>

It is worth noting that choosing the base points is crucial in drawing a provisional line in the first stage. Significantly, even at this stage, equitable considerations start kicking in to fulfill a fundamental role while selecting relevant basepoints for the establishment of a provisional delimitation line. Lando aptly observes that even the major adjustments of delimitation lines align with the relevant provisions of UNCLOS. Although significant adjustments are often not required, based on the unique circumstances of a given case, there might be a need for a substantial shift in the equidistance line to reach an equitable solution.<sup>96</sup>

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91. Continental Shelf (Libya/Malta), *supra* note 43, ¶ 48.

92. TANAKA, *supra* note 82, at 272–90.

93. Gorka, *supra* note 18, at 211.

94. TANAKA, *supra* note 82, at 257–58.

95. Coalter G. Lathrop, *The Provisional Equidistance Line: Charting a Course Between Objectivity and Subjectivity?*, in MARITIME BOUNDARY DELIMITATION, *supra* note 11, at 200, 200–3.

96. LANDO, *supra* note 40, at 244–45.

The judicial practice seems to show that where the use of the baseline established by the parties may lead to an inequitable result, international courts and tribunals may select relevant basepoints or avoid using any basepoints on such islands for drawing the provisional delimitation line. For instance, in *Qatar v. Bahrain*, the ICJ did not select any basepoints on the island of Qit'at Jaradah for the construction of the provisional delimitation line.

The next question to be considered is that of Qit'at Jaradah. The Court observes that Qit'at Jaradah is a very small island, uninhabited and without any vegetation. This tiny island, which . . . comes under Bahraini sovereignty, is situated about midway between the main island of Bahrain and the Qatar peninsula. Consequently, if its low-water line were to be used for determining a basepoint in the construction of the equidistance line, and this line taken as the delimitation line, a disproportionate effect would be given to an insignificant maritime feature.

In similar situations the Court has sometimes been led to eliminate the disproportionate effect of small islands (see *North Sea Continental Shelf*; I.C.J. Reports 1969, p. 36, para. 57; *Continental Shelf (Libyan Arab Jamahiriya/Malta)*, Judgment, I. C. J. Reports 1985, p. 48, para. 64). The Court thus finds that: there is a special circumstance in this case warranting the choice of a delimitation line passing immediately to the east of Qit'at Jaradah.<sup>97</sup>

Likewise, in the *Romania/Ukraine* case, the ICJ considered it inappropriate to place any base points on Serpents' Island for the provisional equidistance line.

However, Serpents' Island, lying alone and some 20 nautical miles away from the mainland, is not one of a cluster of fringe islands constituting "the coast" of Ukraine. To count Serpents' Island as a relevant part of the coast would amount to grafting an extraneous element onto Ukraine's coastline; the consequence would be a judicial refashioning of geography, which neither the law nor practice of maritime delimitation authorizes. The Court is thus of the view that Serpents' Island cannot be taken to form part of Ukraine's coastal configuration (cf. the islet of Filfla in the case concerning *Continental Shelf (Libyan Arab Jamahiriya/Malta)*, Judgment, I.C.J. Reports 1985, p. 13). For this reason, the Court considers it inappropriate to select any base points on Serpents' Island for the construction of a provisional equidistance line between the coasts of Romania and Ukraine.<sup>98</sup>

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97. *Maritime Delimitation and Territorial Questions Between Qatar and Bahrain (Qatar v. Bahr.)*, Judgment, 1994 I.C.J. 112, ¶ 219 (July 1).

98. *Maritime Delimitation in the Black Sea (Rom. v. Ukr.)*, *supra* note 64, ¶ 149.

Similarly, in the *Nicaragua/Colombia* case, the ICJ held that it was appropriate to disregard several maritime features in the construction of a provisional median line.

When placing base points on very small maritime features would distort the relevant geography, it is appropriate to disregard them in the construction of a provisional median line. . . . The Court's decision not to place a base point upon Quitasueño means, however, that it must consider whether one should be placed upon Serrana. Although larger than Quitasueño, Serrana is also a comparatively small feature, whose considerable distance from any of the other Colombian islands means that placing a base point upon it would have a marked effect upon the course of the provisional median line which would be out of all proportion to its size and importance. In the Court's view, no base point should be placed on Serrana. The Court also considers that there should be no base point on Low Cay, a small uninhabited feature near Santa Catalina.<sup>99</sup>

In the second stage, relevant circumstances need to be reviewed, and the adjustment of the provisional line will be required to ensure an equitable outcome. The adjustment of a provisional line at this stage is made on a case-by-case basis, considering the unique factors. At the last stage, it will be verified that the final delimitation line does not lead to an inequitable result by employing the disproportionality test. The final delimitation line is also determined by considering the relevant circumstances.<sup>100</sup> Hence, relevant circumstances are of paramount importance and part of all stages in order to achieve an equitable result.

## VII. CONCLUSIONS

Equitable principles have a normative character as part of international law.<sup>101</sup> The ICJ affirmed that the principles of maritime delimitation en-

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99. Territorial and Maritime Dispute (Nicar. v. Colom.), *supra* note 86, ¶ 202.

100. Paul von Muhlendahl, *Tiny Land Features in Recent Maritime Delimitation Case Law*, 31 INTERNATIONAL JOURNAL OF MARINE & COASTAL LAW 1, 17–22 (2016); TANAKA, *supra* note 82, at 268–71, 272–84; Maritime Delimitation and Territorial Questions Between Qatar and Bahrain (Qatar v. Bahr.), *supra* note 97, ¶ 219; Maritime Delimitation in the Black Sea (Rom. v. Ukr.), *supra* note 64, ¶ 149; Territorial and Maritime Dispute (Nicar. v. Colom.), *supra* note 86, ¶ 202.

101. CRAWFORD, *supra* note 4, at 273–78.

shrined in Article 83 are part of customary international law. However, although it is a treaty obligation and reflection of customary international law, a cautious approach to equitable considerations is occasionally observed. When doing this, other important concepts, such as legal certainty and stability, are emphasized in contrast to the relatively imprecise nature of the equitable principles and the relevant circumstances.<sup>102</sup> Equitable considerations are sometimes mistakenly associated with subjectivity and legal uncertainty compared to objective determination. Be that as it may, arguably, this over-cautious approach is not compatible with the text and spirit of UNCLOS, as well as with the jurisprudence that prioritizes an equitable solution for the delimitation of the continental shelf. Publicists rightly observe that international courts and tribunals have already formed a uniform and consistent approach to employing and assessing equitable principles concerning the relevant circumstances. In this regard, case law demonstrates that similar relevant circumstances are addressed similarly, maintaining coherence with prior jurisprudence on the delimitation of the continental shelf.<sup>103</sup> At this juncture, it might be useful to refer to the accurate observation of ITLOS, emphasizing the role of the jurisprudence in addressing the above-mentioned concerns. “International courts and tribunals have developed a body of case law on maritime delimitation which has reduced the elements of subjectivity and uncertainty in the determination of maritime boundaries and in the choice of methods employed to that end.”<sup>104</sup>

Equitable principles and relevant circumstances are intertwined and, ultimately, they serve the same objective—the attainment of an equitable outcome. As discussed above, perhaps the main distinction between the two concepts is that the former denotes an abstract concept, whereas the latter is case-specific and factual. They complete each other, and both are instrumental in evaluating and assessing the unique characteristics of a given case to determine the final boundary in an equitable manner. After all, what is regarded as equitable in a particular case depends on the unique circumstances of that case.

Thus, undoubtedly, accomplishing the ultimate objective of the delimitation process necessitates considering the relevant circumstances in light of

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102. *Arbitration Between Barbados and the Republic of Trinidad and Tobago*, *supra* note 39, ¶ 229.

103. LANDO, *supra* note 40, at 244–45.

104. *Delimitation of the Maritime Boundary Between Bangladesh and Myanmar in the Bay of Bengal (Bangl./Myan.)*, Case No. 16, Judgment of Mar. 14, 2012, ITLOS Rep. 2012, at 4, ¶¶ 225–26.



the equitable principles. Notably, the absence of a closed list of relevant circumstances provides the necessary flexibility to international courts and tribunals to resolve complicated delimitation disputes by analyzing them from different angles through a broader perspective in order to reach the ultimate objective of achieving an equitable result under international law.